

ALLING & JILLSON, LTD.
 Richard J. McGuffin, NBN 12819
 276 Kingsbury Grade, Suite 2000
 P.O. Box 3390
 Lake Tahoe, NV 89449
 TEL: 775.588.6676; FAX: 775.588.4970

PORTER SCOTT
 A PROFESSIONAL CORPORATION
 Carl J. Calnero, SBN 117590
 Martin N. Jensen, SBN 232231
 350 University Ave., Suite 200
 Sacramento, California 95825
 TEL: 916.929.1481; FAX: 916.927.3706
 Attorneys for Defendant: STEWART TITLE OF PLACER, INC.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re: BANKRUPTCY CASE NO. 12-51014-btb

NATHAN L. TOPOL, an individual, Chapter 7

Debtor. Adversary Case No. 15-05015-gwz

CITIMORTGAGE, INC., a corporation,

Plaintiff,

v.

W. DONALD GIESEKE, Trustee of the
 NATHAN L. TOPOL bankruptcy estate,

Defendants.

W. DONALD GIESEKE, Trustee of the
 NATHAN L. TOPOL bankruptcy estate.

Third Party Plaintiff,

STEWART TITLE OF PLACER, a California
 corporation; fka SIERRA VALLEY TITLE
 COMPANY, and its successors,

Third Party Defendant.

**STEWART TITLE OF PLACER, INC.'S
 SEPARATE STATEMENT OF
 UNDISPUTED MATERIAL FACTS IN
 SUPPORT OF MOTION FOR SUMMARY
 JUDGMENT OR PARTIAL SUMMARY
 JUDGMENT AGAINST BANKRUPTCY
 TRUSTEE'S THIRD PARTY COMPLAINT
 [F.R.C.P Rule 56]**

**Date: December 15, 2016
 Time: 2:00 p.m.
 Courtroom: 1, 5th Floor
 Hon. Gregg W. Zive**

PORTER | SCOTT
 350 University Ave., Suite 200
 Sacramento, CA 95825
 TEL: 916.929.1481
 FAX: 916.927.3706

UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSITION
<p>1. On October 9, 2002, Topol borrowed \$5.5 million from Citibank, F.S.B, secured by a deed of trust.</p> <p>Evidence: Kovesci Declaration, ¶ 3.</p>	
<p>2. The Citi Loan transaction was to be completed with the retention of Stewart Title of Northern Nevada ("STN") acting as the intermediary between the lender (Citibank, F.S.B.) and the borrower (Topol).</p> <p>Evidence: Baker Declaration, ¶ 1.</p>	
<p>3. STN was an escrow company located in Reno, Nevada.</p> <p>Evidence: Baker Declaration, ¶ 2.</p>	
<p>4. STN was not authorized to issue title insurance policies via Stewart Title Guaranty in Placer County, California.</p> <p>Evidence: Baker Declaration, ¶ 3.</p>	
<p>5. Stewart Title of Placer ("STP") was and is authorized to issue title insurance policies via Stewart Title Guaranty in Placer County, California.</p> <p>Evidence: Baker Declaration, ¶ 3; Goettsch Declaration, ¶ 1.</p>	
<p>6. For the Citi Loan transaction, STN completed the escrow portion of the transaction and STP completed the title insurance portion of the transaction.</p> <p>Evidence: Baker Declaration, ¶ 4; Goettsch Declaration, ¶ 2.</p>	
<p>7. STP received \$3,990.00 for completing the title insurance portion of the Citi loan</p>	

{01575809.DOCX}

2

PORTER | SCOTT
 350 University Ave., Suite 200
 Sacramento, CA 95825
 TEL: 916.929.1481
 FAX: 916.927.3706

1	UNDISPUTED MATERIAL FACTS AND	OPPOSITION
2	SUPPORTING EVIDENCE	
3	transaction.	
4	Evidence: Baker Declaration, ¶ 5; Goettsch Declaration, ¶ 3.	
5	8. The only parties to the escrow were	
6	Citbank, F.S.B. and Topol.	
7	Evidence: Kovesci Declaration, ¶ 3.	
8	9. STP assigned escrow number DG-	
9	54506527-NM and the title number	
10	506527 to the 2002 loan transaction.	
11	Evidence: Goettsch Declaration, ¶ 4.	
12	10. On October 16, 2002, the first Deed of	
13	Trust ("Deed of Trust") on the 4250 West	
14	Lake Boulevard, Homewood, California	
15	property ("Property") securing the \$5.5	
16	million note was thereupon recorded by	
17	the Placer County Recorder.	
18	Evidence: Goettsch Declaration, ¶ 5; Kovesci Declaration, ¶ 3.	
19	11. The Deed of Trust expressly provided in	
20	paragraph 23 that only the lender	
21	(Citibank, F.S.B.) could and request that	
22	the trustee execute a reconveyance.	
23	Evidence: Kovesci Declaration, ¶¶ 5, Exhibit A thereto; Goettsch Declaration, ¶ 5.	
24	12. Citibank Services Corporation ("CBSC")	
25	was listed as trustee on the Deed of Trust.	
26	Evidence: Kovesci Declaration, ¶ 3.	
27	13. In December 2003, Placer Title (an	
28	unrelated title company) caused to be	
	recorded with the Placer County	
	Recorder's Office a second Deed of Trust	
	on the Property, securing a \$1.5 million	

{01575809.DOCX}

3

PORTER | SCOTT
 350 University Ave., Suite 200
 Sacramento, CA 95825
 TEL: 916.929.1481
 FAX: 916.927.3706

1	UNDISPUTED MATERIAL FACTS AND	OPPOSITION
2	SUPPORTING EVIDENCE	
3	loan to Topol in favor of U.S. Bank,	
4	which was the beneficiary/lender.	
5	Evidence: Goettsch Declaration, ¶ 6.	
6	14. In January 2004, STP manager Regina	
7	Kay Krahn (now Garland) caused to be	
8	recorded in the Placer County Recorder's	
9	Office a Deed of Full Reconveyance	
10	regarding the \$5.5 million Citibank loan.	
11	Evidence: Exhibit 1, Jensen Declaration, ¶ 2;	
12	Exhibit 2, Jensen Declaration, ¶ 3, Garland	
13	Depo. Transcript, 19:12-25:10; 32:14-19;	
14	Goettsch Declaration, ¶ 7.	
15	15. Garland later identified the signature on	
16	the Deed of Reconveyance as likely her	
17	own, but did not remember the particular	
18	transaction.	
19	Evidence: Exhibit 2, Jensen Declaration, ¶ 3,	
20	Garland Depo. Transcript, 24:19-22.	
21	16. The Deed of Trust provided the exclusive	
22	method whereby the lender (Citibank	
23	F.S.B.) could appoint a successor trustee.	
24	Evidence: Exhibit A, Kovesci Declaration, ¶ 4,	
25	Deed of Trust ¶ 24.	
26	17. A successor trustee could only be	
27	appointed by an instrument executed and	
28	acknowledged by the lender and recorded	
	in the office of the Recorder of the	
	County in which the property is located.	
	Evidence: Exhibit A, Kovesci Declaration, ¶ 4,	
	Deed of Trust ¶ 24.	
	18. Any successor trustee would succeed to	
	all title, powers, and duties conferred	
	upon the trustee in the Deed of Trust and	
	applicable California law.	

PORTER | SCOTT
 350 University Ave., Suite 200
 Sacramento, CA 95825
 TEL: 916.929.1481
 FAX: 916.927.3706

UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSITION
<p>Evidence: Exhibit A, Kovesci Declaration, ¶ 4, Deed of Trust ¶ 24.</p>	
<p>19. No substitution of trustee has ever been recorded against the property appointing STP as the successor trustee under the Deed of Trust.</p> <p>Evidence: Goettsch Declaration, ¶ 8.</p>	
<p>20. Neither Citibank, F.S.B., nor its non-bank successor CITIMORTGAGE, INC. ("CMI"), has ever agreed to appoint a successor trustee under the Deed of Trust, or to execute and record a Substitution of Trustee.</p> <p>Evidence: Kovesci Declaration, ¶ 15.</p>	
<p>21. There is no instrument executed and acknowledged by Citibank, F.S.B. or CMI appointing STP as the successor trustee under the Deed of Trust.</p> <p>Evidence: Kovesci Declaration, ¶¶ 15-16.</p>	
<p>22. Neither Citibank, F.S.B. nor CMI ever requested that STP execute or record a reconveyance of the Deed of Trust on the Real Property.</p> <p>Evidence: Kovesci Decl., ¶ 17.</p>	
<p>23. Neither Citibank, F.S.B. nor CMI ever surrendered the Deed of Trust and notes evidencing the debt secured by the Deed of Trust to STP.</p> <p>Evidence: Kovesci Declaration, ¶ 17.</p>	
<p>24. Neither Citibank, F.S.B. nor CMI ever requested that STP record a Reconveyance of the Deed of Trust on</p>	

{01575809.DOCX}

5

PORTER | SCOTT
 350 University Ave., Suite 200
 Sacramento, CA 95825
 TEL: 916.929.1481
 FAX: 916.927.3706

1	UNDISPUTED MATERIAL FACTS AND	OPPOSITION
2	SUPPORTING EVIDENCE	
3	the Real Property.	
4	Evidence: Kovesci Declaration, ¶ 17.	
5	25. Neither Citibank, F.S.B. nor CMI never	
6	ratified the Deed of Reconveyance that	
7	was recorded by STP on the Real	
8	Property.	
8	Evidence: Kovesci Declaration, ¶ 20.	
9	26. The Citi Loan has never been repaid in	
10	full.	
11	Evidence: Kovesci Declaration, ¶¶ 11-12.	
12	27. From December 2001 until February	
13	2014, Topol continued to make monthly	
14	\$24,653.42 payments on the Citibank	
15	note, even after the putative	
15	reconveyance was recorded.	
15	Evidence: Kovesci Declaration, ¶ 10.	
16	28. On July 2, 2004, STP received a title	
17	insurance only order from Tigor Title of	
18	Nevada (hereafter "Tigor") regarding an	
19	escrow file for which U.S. Bank received	
20	a Deed of Trust after lending Topol an	
20	additional \$4.5 million.	
21	Evidence: Goettsch Declaration, ¶ 10.	
22	29. U.S. Bank's Deed of Trust was in second	
23	position after paying off a pre-existing	
24	\$1.5 million note and issuing Topol a	
24	Deed of Reconveyance for that note.	
25	Evidence: Goettsch Declaration, ¶ 11.	
26	30. In or about July 2004, STP issued a title	
27	policy showing that the \$5.5 million	
28	Citibank Deed of Trust remained in first	
28	position, ahead of the \$4.5 million U.S.	
28	Bank Deed of Trust.	
	Evidence: Goettsch Declaration, ¶ 12 and	

{01575809.DOCX}

6

PORTER | SCOTT
 350 University Ave., Suite 200
 Sacramento, CA 95825
 TEL: 916.929.1481
 FAX: 916.927.3706

UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSITION
Exhibit 5 thereto.	
<p>31. STP assigned escrow number cm-15006280-sw and title number 34-239270 to the 2004 loan transaction.</p> <p>Evidence: Goettsch Declaration, ¶ 14.</p>	
<p>32. Until February of 2014, Topol continued to make payments to CMI on the \$5.5 million note.</p> <p>Evidence: Kovesci Declaration, ¶ 10.</p>	
<p>33. Topol filed for bankruptcy protection on May 1, 2012.</p> <p>Evidence: Exhibit 2, Jensen Declaration, ¶ 4.</p>	
<p>34. On October 30, 2015, this Court ordered the sale of the Real Property for \$9.95 million to 4250 WLB, LLC, a California limited liability company, or its nominee.</p> <p>Evidence: Jensen Declaration, ¶ 5.</p>	
<p>35. Plaintiff filed the Third Party Complaint against STP on January 7, 2016, alleging three causes of action: negligence, indemnification, and slander of title.</p> <p>Evidence: Jensen Declaration, ¶ 6.</p>	
<p>36. STP has no contractual relationship with the bankruptcy trustee as it relates to the Real Property.</p> <p>Evidence: Goettsch Declaration, ¶ 13.</p>	
<p>37. STP received \$2825.00 for completing the title insurance portion of the U.S. Bank-Topol loan transaction.</p> <p>Evidence: Goettsch Declaration, ¶ 15 and Exhibit 6 thereto.</p>	

{01575809.DOCX}

7

PORTER | SCOTT
350 University Ave., Suite 200
Sacramento, CA 95825
TEL: 916.929.1481
FAX: 916.927.3706

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: November 1, 2016

Respectfully submitted,

ALLING & JILLSON, LTD.

By /s/ Richard J. McGuffin

Richard J. McGuffin
276 Kingsbury Grade, Suite 2000
P.O. Box 3390
Lake Tahoe, NV 89449
Tel: (775) 588-6676
Fax: (775) 588-4970
Email: rmcguffin@ajattorneys.com

-and-

Date: November 1, 2016

PORTER SCOTT

By /s/ Martin N. Jensen

Martin N. Jensen
350 University Ave., Suite 200
Sacramento, California 95825
Tel: (916) 929-1481
Fax: (916) 927-3706
Email: mjensen@porterscott.com
(Motion for *pro hac vice* admission has been filed)
Attorneys for Stewart Title of Placer, Inc.

In Re: Nathan L. Topol, Citimortgate, Inc. v. W. Donald Gieseke, et al.
United States Bankruptcy Court, District of Nevada
Bankruptcy Case No. 12-51014-GWZ; Adversary Case No. 15-05015-GWZ

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is 350 University Avenue, Suite 200, Sacramento, California 95825.

On November 2, 2016, I caused to have served the following document:

STEWART TITLE OF PLACER, INC.'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT AGAINST BANKRUPTCY TRUSTEE'S THIRD PARTY COMPLAINT

	BY MAIL: I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
	BY PERSONAL SERVICE: I caused such document to be personally delivered to the person(s) addressed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.
	BY OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the person(s) listed below. I placed the envelope or package for collection and overnight delivery at my office or a regularly utilized drop box of the overnight delivery carrier.
	BY FAX TRANSMISSION: Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached
XX	BY THE COURT'S CM/ECF SYSTEM. Pursuant to USBC – Nevada rules, the case is subject to electronic case filing. I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed below.

Addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Sacramento, California on November 2, 2016.


 Desiree Ganzon

PORTER | SCOTT
 350 University Ave., Suite 200
 Sacramento, CA 95825
 TEL: 916.929.1481
 FAX: 916.927.3706

SERVICE LIST

Attorney	Party Represented
Stephen R. Harris Harris Law Practice 6151 Lakeside Drive, Suite 2100 Reno, NV 89511 Tel: (775) 786-7600 Fax: (775) 786-7764 steve@harrislawreno.com John Echeverria ECHEVERRIA LAW OFFICE 9432 Double R Blvd. Reno, NV 89521 Tel: (775) 786-4800 je@eloreno.com COURTESY COPY via EMAIL ONLY	3rd Party Plaintiff W. DONALD GIESKE Defendant W. DONALD GIESKE
Eddie R. Jimenez Supervising Partner ALDRIDGE PITE, LLP 4375 Jutland Drive, Suite 200 P.O. Box 17933 San Diego, CA 92177- 0933 Tel: (858) 750-7600 Fax: (619) 590-1385 ejimenez@aldridgepite.com	Plaintiff CITIMORTGAGE, INC.
Richard J. McGuffin David R. Cochran ALLING & JILLSON, Ltd. 276 Kingsbury Grade, Suite 2000 P.O. Box 3390 Lake Tahoe, NV 89449 Tel: (775) 588-6676 Fax: (775) 588-4970 rmcguffin@ajattorneys.com Co-Counsel - Nevada	3rd Party Defendant STEWART TITLE OF PLACER fka SIERRA VALLEY TITLE COMPANY

{01575809.DOCX}

10

**STEWART TITLE OF PLACER, INC.'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS
 IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT
 AGAINST BANKRUPTCY TRUSTEE'S THIRD PARTY COMPLAINT**